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June 23, 1999

EX PARTE

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte* Presentation in CC Dkt. No. 99-68

Dear Ms. Salas:

On Tuesday, June 22, 1999, on behalf of Time Warner Communications Holdings Inc. d/b/a Time Warner Telecom ("TWTC"), Don Shepheard and I met with Ed Krachmer of the Office of Plans and Policy and Tamara Preiss of the Competitive Pricing Division of the Common Carrier Bureau to discuss the issues previously raised by TWTC in its comments and reply comments in the above-referenced docket. We also left behind the attached outline. Pursuant to Section 1.1206(b)(2) of the FCC's rules, an original and one copy of this letter and the attached outline are being filed with your office for inclusion in the record of this proceeding.

Sincerely,

Thomas Jones

Attachment

cc: Ed Krachmer
Tamara Preiss

INTER-CARRIER COMPENSATION FOR ISP-BOUND TRAFFIC
CC Docket No. 99-68

Inter-Carrier Compensation for ISP-Bound Traffic Should Continue to be Included Under Section 251/252 Negotiations and State Review Process

- More efficient to conduct negotiations for compensation of ISP-bound traffic together with all other issues, and to arbitrate any disputes together in state arbitration proceedings in accordance with Section 252.
  - States have gained substantial experience in overseeing and arbitrating interconnection agreement negotiations.
  - Creation of a Federal arbitration process would be time-consuming, expensive, and redundant.

- The FCC has authority to delegate responsibility for regulating inter-carrier compensation to the states in accordance with Section 251/252
  - FCC can require ISP compensation under same terms and conditions as other 251(b)(5) traffic, pursuant to Sections 201 and 202(a).
  - Eighth Circuit Court has held that the FCC may allow state regulators to set rates for recovery of interstate costs related to ISP-related services

- States have long had authority to regulate jurisdictionally mixed and inseverable services where neither Congress nor FCC has preempted state regulation.
  - Section 252(b) grants states authority to arbitrate "any open issues."
  - Sections 251(d)(3) and 261(c) grant the states the authority to apply state law in the Section 252 arbitration and review process to regulate jurisdictionally mixed ISP-bound traffic in the absence of conflicting Federal law. Section 252(b) grants states authority to arbitrate "any open issues."

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Don Shepheard
VP-Federal Regulatory Affairs
Time Warner Telecom
June 22, 1999

The FCC Should Adopt National Rules to Guide States in Negotiation Proceedings

- Section 202(a) requires that carriers treat the exchange of ISP-bound traffic between LECs as if it were the exchange of Section 251(b)(5) traffic. Satisfies the Three-Prong Test:
  - Whether services are like one another.
    - Local business services purchased by ISPs are functionally indistinguishable from local services purchased by other business end-users out of local exchange tariffs.
  - Whether there is disparate pricing or treatment between like services.
    - Adoption of a rule which permits a compensation scheme different from that of traffic terminated to other end users in a functionally identical manner is discriminatory under 202(a) to both CLECs and ISPs.
  - Whether the discrimination is justified and reasonable.
    - There is no just and reasonable basis for discrimination. Commission has concluded that LECs should be able to recover costs incurred for the transporting and termination of ISP traffic. All LECs perform same functions when transporting and delivering calls to ISP end users as with all other end users. When LECs perform same functions, they incur same costs.

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Don Shepheard
VP-Federal Regulatory Affairs
Time Warner Telecom
June 22, 1999

Commission Should Reject ILEC Proposals to Eliminate Inter-Carrier Compensation for ISP-Bound Traffic and Reject ILEC Proposals for Jointly-Provided Access

- If priced correctly, inter-carrier compensation is based on forward-looking cost ILEC avoids by not transporting and terminating ISP-bound calls on their network.

- Any claimed shortfall in local exchange rates of end users originating calls to ISPs is irrelevant to the question of inter-carrier compensation.
  - ALTS response to Ameritech's study shows claims of revenue shortfalls to be highly suspect.
  - Even assuming a shortfall for ISP calls, the study does not demonstrate that local exchange rates in aggregate cause a revenue shortfall. Any attempt by the Commission to link inter-carrier compensation with local rate shortfalls would require vast resources to quantify.

- The Commission has repeatedly affirmed that ILECs claiming revenue shortfalls from large-volumes of terminating ISP traffic "may address such concerns with state regulators."

- ILEC jointly-provided access model requiring CLEC to share local service revenues demonstrates the absurdity of applying an access model for inter-carrier compensation to the local exchange regulatory model under the ESP/ISP exemption.
  - US West suggestion that carriers allocate the ISP's local service revenue based on non-ISP access line weighting highlights this absurdity. Assuming a $500/month PRI rate with a 5% market share, a CLEC would receive only $25 to support the cost of providing the PRI service and terminating the large volumes of traffic from ILEC end users.
  - Claims that CLECs can impose a surcharge to collect ILEC access revenue or raise the price of PRIs ignore marketplace reality and ILEC ability to squeeze market prices. Such pricing by CLECs would result in wholesale abandonment of CLEC services by ISPs - the very result ILECs seek.
  - Under the ILEC access model, shared local service revenues would be required any time an end user receives a local call and routes it to an interexchange network (i.e., credit verification, ticket agencies, etc.).

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Don Shepheard
VP-Federal Regulatory Affairs
Time Warner Telecom
June 22, 1999